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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 PAVEL ROMBAKH,

11 Petitioner,

12 v.

13 UNITED STATES OF AMERICA,

14 Respondent.

CASE NO. C15-0622JLR

ORDER DENYING PETITION
FOR WRIT OF HABEAS
CORPUS

15 **I. INTRODUCTION**

16 Before the court is Petitioner Pavel Rombakh's 28 U.S.C. § 2255 petition for writ
17 of habeas corpus to vacate, set aside, or correct his sentence. (Petition (Dkt. # 1).) The
18 court has reviewed the petition, all submissions filed in support of or opposition thereto,
19 the trial record, and the applicable law. Being fully advised, the court DENIES Mr.
20 Rombakh's petition.

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II. BACKGROUND

On May 8, 2014, the government filed a felony information charging Mr. Rombakh with maintaining an unlicensed money transmitting business, in violation of 18 U.S.C. § 1960. (*United States v. Rombakh*, No. CR14-0137JLR, Dkt. # 1.) On May 13, 2014, Mr. Rombakh pleaded guilty. (*Id.* Dkt. # 7.) Under the plea agreement, Mr. Rombakh admitted that he had conducted an unlicensed money transmitting business from 2007 to 2012. (Plea Agreement (Dkt. # 4-1) ¶ 9(a).) He acknowledged receiving at least \$150,000,000.00 in international wires in the United States and re-transmitting most of those funds internationally, while keeping a portion of the funds for himself as a fee for his services. (*Id.*)

Under the plea agreement, the parties agreed that the applicable sentencing guideline for the offense was United States Sentencing Guideline (“Sentencing Guidelines” or “USSG”) § 2S1.3. (*See* Plea Agreement ¶ 8.) In addition, the parties agreed that the base offense level was six and that there was a 26-point increase because the value of the funds exceeded \$100,000,000.00, but was less than \$200,000,000.00. (*See id.*) The parties also agreed that no other Sentencing Guidelines adjustments applied other than for acceptance of responsibility. (*Id.*)

Implicit in the parties’ agreement that no other Sentencing Guidelines adjustments applied is their agreement that USSG §§ 2S1.3(b)(1) and 2S1.3(b)(3) do not apply. (*See* Plea Agreement ¶ 8.) Section 2S1.3(b)(1) provides for an enhancement if the defendant “knew or believed” that the “funds were proceeds of unlawful activity, or were intended to promote unlawful activity” (“the deliberate knowledge enhancement”). USSG

1 § 2S1.3(b)(1). Section 2S1.3(b)(3) provides for a substantial reduction if (1) the
2 defendant did not act with reckless disregard regarding the source of the funds and (2) the
3 funds were the proceeds of lawful activity (“the clean funds reduction”). USSG
4 § 2S1.3(b)(1). At the sentencing hearing, Mr. Rombakh’s counsel argued that the
5 government had unfairly argued in its Sentencing Memorandum (*United States v.*
6 *Rombakh*, No. CR14-0137JLR, Dkt. # 15) and at the sentencing hearing about the illegal
7 nature of the source of the funds. (Sentencing Tr. (Dkt. # 4-5) at 9, 12-23.)

8 In his current petition, Mr. Rombakh’s grounds for habeas relief are as follows:

9 I was denied effective assistance of counsel at sentencing, in violation of
10 the U.S. Constitution, amend 6.

11 My attorneys failed to object when the government violated the plea
12 agreement and failed adequately to investigate, present evidence, or even
13 explain to the Court the nature and circumstances of my business, leaving
14 the impression that I was extensively involved in international money
15 laundering, which is not accurate. I urged my attorneys to provide an
16 expert opinion regarding the nature of Russian businesses and finance, and
17 to provide the Court my brother’s letter regarding the precautions he took to
18 assure that we dealt with legitimate businesses and not criminal proceeds.
19 My attorneys did not obtain that evidence, which I now submit to the Court.
20 They failed to explain anything about the nature and circumstances of my
21 business, even after the Court repeatedly asked them to. As a result, the
22 Court was left to believe I engaged in money laundering, although the
Government did not charge, and stipulated in the plea agreement it was
unable to prove, [sic] any such crime. In fact, I made every effort to engage
in honest transactions with legitimate funds.

My attorneys also failed to give specific detailed information regarding my
family ties and responsibilities, which could have provided a ground for
departure.

I believe the Court would have imposed a lower sentence had it been fully
informed of the nature and circumstances of my business and the specific
family ties and responsibilities I have.

1 (Petition at 5.)

2 Along with his petition, Mr. Rombakh submitted a memorandum in support of his
 3 petition (*see* Mem. in Support (Dkt. # 1-1)) and several declarations concerning the
 4 nature of the wire transfers and underlying business transactions, Russia's general
 5 banking practices, and whether Mr. Rombakh's attorney was ineffective and Mr.
 6 Rombakh suffered prejudice as a result (*see generally* Dkt. # 1-2). The court issued an
 7 order directing service of Mr. Rombakh's petition upon the government. (Order (Dkt. #
 8 3).) The government filed a response to Mr. Rombakh's petition and memorandum.
 9 (Resp. (Dkt. # 4).) The parties then filed further reply memoranda. (Pet. Reply (Dkt.
 10 # 8); Gov't Reply (Dkt. # 9).) The court now considers Mr. Rombakh's petition.

11 III. ANALYSIS

12 A. Ineffective Assistance of Counsel Standard

13 Mr. Rombakh's claims for ineffective assistance of counsel are controlled by
 14 *Strickland v. Washington*, 466 U.S. 668 (1984). To show ineffective assistance of
 15 counsel under *Strickland*, a defendant must prove that (1) "counsel's representation fell
 16 below an objective standard of reasonableness," and (2) there "is a reasonable probability
 17 that, but for counsel's unprofessional errors, the result of the proceeding would have been
 18 different." *Id.* at 688, 694. With respect to the first prong, the defendant must show that
 19 "in light of all the circumstances, the identified acts or omissions were outside the wide
 20 range of professionally competent assistance." *Id.* at 690. At this step, judicial scrutiny
 21 is highly deferential: there is a strong presumption that counsel's performance fell within
 22 the wide range of reasonably effective assistance. *Id.* at 689. With respect to the second

1 prong, where, as here, the challenge concerns the sentencing phase, the defendant must
2 show counsel's performance caused the court to make some sort of error at sentencing,
3 and that there is a reasonable probability that, but for this error, the court would have
4 imposed a lesser sentence. *See Glover v. United States*, 531 U.S. 198, 203-04 (2001). "A
5 reasonable probability is a probability sufficient to undermine confidence in the
6 outcome." *Strickland*, 466 U.S. at 694.

7 **B. The Government Did Not Breach the Plea Agreement**

8 Mr. Rombakh argues that his counsel should have claimed at sentencing that the
9 government breached the plea agreement by arguing that Mr. Rombakh engaged in
10 money laundering. (Mem. in Support at 24-29.) In essence, Mr. Rombakh argues that
11 (1) the government agreed in the plea agreement not to argue that the money at issue was
12 the proceeds of illegal activity, (2) the government nevertheless so argued at the
13 sentencing hearing, (3) Mr. Rombakh's counsel failed to object, and (4) Mr. Rombakh
14 was prejudiced as a result. (*See generally id.*)

15 Mr. Rombakh's argument fails because his first point is incorrect. The
16 government's concession that the deliberate knowledge enhancement was inapplicable is
17 not tantamount to a concession that the funds were not derived from illegal activity. Mr.
18 Rombakh misapprehends the scope of the deliberate knowledge enhancement. The
19 enhancement simply provides that an increase in sentencing range is warranted if "the
20 defendant knew or believed that the funds were proceeds of unlawful activity." USSG
21 § 2S1.3(b)(1). By agreeing that this enhancement was inapplicable, the government was
22 not precluded from arguing that the funds were in fact "dirty" and that Mr. Rombakh

1 acted in reckless disregard of that fact. Rather, the government was only precluded from
2 arguing that Mr. Rombakh “knew” or “believed” that the funds were “dirty.” Indeed, it is
3 not surprising that the government raised the issue concerning the nature of the funds at
4 sentencing because Mr. Rombakh stipulated that he lacked sufficient evidence to
5 establish (1) that the funds were not derived from illegal activity and (2) that he acted
6 without reckless disregard of that fact. In any event, the court expressly stated that it was
7 not finding that Mr. Rombakh knew that the funds were the proceeds of illegal activity.
8 (Sentencing Tr. at 22.) In sum, Mr. Rombakh’s petition rests on a misreading of the
9 deliberate knowledge enhancement and for this reason fails.

10 **C. Mr. Rombakh’s Counsel Raised the Objection Presented by the Petition**

11 Mr. Rombakh argues that his counsel was ineffective for failing to object to the
12 government’s argument at the sentencing hearing. (Mem. in Support at 29-30.)
13 However, Mr. Rombakh’s counsel did object that Mr. Rombakh was getting “back-
14 doored” by the government’s argument and explained his theory in detail to the court.
15 (Sentencing Tr. at 9, 12-23.) Not only did Mr. Rombakh’s counsel object on virtually the
16 same basis as Mr. Rombakh in his § 2255 petition, but the court rejected Mr. Rombakh’s
17 argument at sentencing, demonstrating that Mr. Rombakh did not suffer any prejudice.
18 (*Id.* at 17, 22.) Thus, Mr. Rombakh’s claim that the government breached the plea
19 agreement and Mr. Rombakh’s counsel failed to object is without merit.

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D. Mr. Rombakh's Counsel Did Not Act Unreasonably in Not Offering the Evidence Included in Mr. Rombakh's Petition

Mr. Rombakh argues that his counsel was ineffective for failing to do more to demonstrate that the funds at issue were “clean” and to explain Russian banking laws and practices that are in place to avoid money laundering. (Mem. in Support at 31-37.) Mr. Rombakh's claim fails for several reasons. First, he was limited by his plea agreement, which contained his concession that he lacked sufficient proof to establish the clean funds reduction under the Sentencing Guidelines. In any event, Mr. Rombakh cannot establish any prejudice as a result of his counsel's alleged deficiencies here. Indeed, the court specifically declined to find that Mr. Rombakh knew that he was handling illegal funds. (Sentencing Tr. at 22 (“I am not finding the Mr. Rombakh knew they were illegal funds. That's nowhere in any of the documents that are before it.”).)

The court also agrees with the government that the declarations submitted by Mr. Rombakh would have raised more questions than they answered, and it was reasonable for Mr. Rombakh's counsel to decide not to offer them. In any event, nothing in any of the declarations offered by Mr. Rombakh would have altered the court's view of sentencing or the outcome of Mr. Rombakh's sentencing hearing.

Finally, Mr. Rombakh asserts that the court sentenced him for “money laundering”—in effect punishing him for a crime “that was never charged in violation of [due process].” (Lobsenz Decl. (Dkt. # 1-2 at 42-69) ¶¶ 38-39; *see also* Mem. in Support at 42.) In the passage of the sentencing hearing cited by Mr. Rombakh, however, the court merely found that some of the deterrence goals related to money laundering were

1 present in the case. The court sentenced Mr. Rombakh not for “money laundering,” but
 2 for the crime to which he pleaded guilty—conducting an unlicensed money transmitting
 3 business in violation of 18 U.S.C. § 1960(a) and § 1960(b)(1)(A). (*See* Sentencing Tr. at
 4 13 (MR. McCALLUM: “. . . [I]f you simply fail to license with DFI in Washington
 5 State, you are guilty of 1960(a) and (b)(1)(A), which is the language that is throughout
 6 the plea agreement. That’s what we pled to.” THE COURT: “I understand that. . .”).)
 7 Thus, Mr. Rombakh’s claim fails.

8 **E. Mr. Rombakh’s Counsel Did Not Act Unreasonably Regarding the Burden of**
 9 **Proof**

10 Mr. Rombakh asserts that his counsel erred in failing to point out to the court that
 11 Mr. Rombakh bore the burden of proof in establishing that the “clean” funds reduction
 12 applied. (Mem. in Support at 37-39.) First, Mr. Rombakh’s counsel correctly referenced
 13 the burden of proof in his sentencing memorandum. (*See* Def. Sent. Mem. (Dkt. # 4-4) at
 14 6 (“At most, we would read the parties’ stipulation in this regard to mean that the
 15 defendant cannot prove the elements of USSG § 2S1.3(b)(3) . . .”).) Second, the court
 16 was under no misapprehension concerning the burden proof. (*See, e.g.*, Sentencing Tr. at
 17 16 (“THE COURT: Do you understand the government’s position is, which [is] it would
 18 have been to Mr. Rombakh’s advantage if you had pled to (c), if you thought you could
 19 sustain the burden. That’s the only importance that I give to the government’s
 20 argument.”).) In sum, Mr. Rombakh’s counsel did not act unreasonably, and Mr.
 21 Rombakh was not prejudiced by his counsel’s actions here.

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F. Mr. Rombakh's Family Ties and Responsibilities

In his petition, Mr. Rombakh states that his counsel “failed to give specific detailed information regarding my family ties and responsibilities, which could have provided a ground for departure. (Petition at 5.) Mr. Rombakh, however, never develops this argument or explains how this information likely would have resulted in a different outcome at his sentencing hearing. (*See generally* Mem. in Support.) As a result, Mr. Rombakh has failed to sustain his burden under *Strickland* with respect to this claim, and the court rejects it. *See Strickland*, 466 U.S. at 694.

G. An Evidentiary Hearing is Not Warranted

For the above stated reasons, the court denies Mr. Rombakh's petition. The court determines that an evidentiary hearing on this matter is unnecessary. The court must hold an evidentiary hearing unless “the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief.” 28 U.S.C. § 2255(b); see *Frazer v. United States*, 18 F.3d 778, 781 (9th Cir. 1994). However, “[n]o hearing is required if the allegations, viewed against the record, either fail to state a claim for relief or are so palpably incredible or patently frivolous as to warrant summary dismissal.” *Shah v. United States*, 878 F.2d 1156, 1158 (9th Cir. 1989) (internal quotation marks omitted). In the instant matter, the record is clear and consistent throughout and is a sufficient basis on which to judge Mr. Rombakh's allegations of ineffective counsel. Indeed, Mr. Rombakh has availed himself of the opportunity to file memoranda and several declarations in support of his petition, which the court has thoroughly reviewed.

1 Accordingly, the court chooses to exercise its discretion not to hold an evidentiary
2 hearing. *See id.*

3 **H. Certificate of Appealability**

4 Finally, the court declines to issue a certificate of appealability. A habeas
5 petitioner can appeal the denial of a 28 U.S.C. § 2255 petition only after obtaining a
6 “certificate of appealability.” 28 U.S.C. § 2253(c); *see generally United States v. Asrar*,
7 116 F.3d 1268, 1269-70 (9th Cir. 1997). Rule 11 of the Rules Governing § 2255
8 Proceedings for the United States District Courts states that “the district court must issue
9 or deny a certificate of appealability when it enters a final order adverse to the applicant.”
10 *See Fed. R. § 2255 Proc. 11.* A court may issue a certificate of appealability “only if the
11 applicant has made a substantial showing of the denial of a constitutional right.” 28
12 U.S.C. § 2253(c)(2). That is, a petitioner must show that “reasonable jurists could debate
13 whether . . . the petition should have been resolved in a different manner or that the issues
14 presented were adequate to deserve encouragement to proceed further.” *Slack v.*
15 *McDaniel*, 529 U.S. 473, 484 (2000) (quotations omitted); *see Hanson v. Mahoney*, 433
16 F.3d 1107, 1112 (9th Cir. 2006).

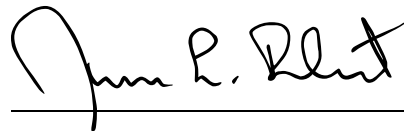
17 Here, Mr. Rombakh has not made a substantial showing of the denial of a
18 constitutional right. The court is not persuaded that reasonable jurists could debate
19 whether the petition should have been resolved differently or that the issues presented are
20 adequate to deserve encouragement to proceed further. The court therefore DECLINES
21 to issue a certificate of appealability.

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IV. CONCLUSION

Based on the foregoing, the court DENIES Mr. Rombakh's 28 U.S.C. § 2255 habeas corpus petition (Dkt. # 1). The court also DECLINES to issue a certificate of appealability.

Dated this 21st day of July, 2015.

A handwritten signature in black ink, appearing to read "James L. Robart", written over a horizontal line.

JAMES L. ROBART
United States District Judge